

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 40****[OST Docket OST-96-1295] [Notice 96-13]****RIN: 2105-AC49****Update of Drug and Alcohol Procedural Rules****AGENCY:** Office of the Secretary, DOT.**ACTION:** Advance Notice of Proposed Rulemaking.

SUMMARY: The Department of Transportation is reviewing its procedural rules for drug and alcohol testing. This review is intended to lead to a notice of proposed rulemaking to update and clarify provisions of the rules. This advance notice of proposed rulemaking seeks suggestions for possible changes to the regulation.

DATES: Comments should be received July 29, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket No. OST-96-1295, Department of Transportation, 400 7th Street, S.W., Washington, D.C., Room PL 401, Washington, D.C., 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366-9306.

SUPPLEMENTARY INFORMATION: Six of the Department's operating administrations (the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), U.S. Coast Guard (USCG), and Research and Special Programs Administration (RSPA)) have modal-specific drug and/or alcohol testing rules. These rules apply to about 8 million transportation employees who work in safety-sensitive positions (e.g., truck drivers, airline pilots, and railroad engineers). The operating administration rules impose substantive requirements concerning the testing

program, on subjects such as which employers must conduct tests, which employees are subject to testing, what kinds of tests are required, when the tests must be administered, the consequences of positive tests and other rule violations, how an employee who has violated the rule can return to duty, and what recordkeeping and reporting requirements apply to employers. These modal rules are not being revisited as part of this rulemaking initiative.

The Office of the Secretary (OST) procedural rule (49 CFR Part 40) that is the subject of this advance notice of proposed rulemaking (ANPRM) applies to regulated parties through each of the operating administration's rules. Part 40 describes, in detail, *how* the required tests must be conducted.

The drug testing portion of Part 40 closely follows the Mandatory Guidelines for Federal Workplace Drug Testing Programs of the Department of Health and Human Services (DHHS). With respect to the four operating administrations covered by the Omnibus Transportation Employee Testing Act of 1991 (FAA, FRA, FHWA, and FTA), the Department is required by statute to have procedures consistent with the DHHS Guidelines. We are committed, as a matter of policy, to consistency with the DHHS Guidelines with respect to the RSPA and Coast Guard drug testing programs as well. Consequently, the Department is not, in this ANPRM, entertaining comments that would require substantive departures from the DHHS Guidelines. Nor is the Department seeking comments on significant substantive issues that have, in recent years, been the subject of completed or pending rulemaking actions (e.g., review of negative drug test results by medical review officers, blood testing for alcohol, "shy bladder" procedures).

The Department conceives this ANPRM, then, not as an occasion for suggesting major substantive changes to how we test for drugs and alcohol, but rather as an opportunity to clarify the myriad details of Part 40. We want to make the rule as easy to understand and apply as we can, reduce burdens where feasible, take "lessons learned" during the several years of operating the program under Part 40 into account, correct problems that have been identified, clarify areas of uncertainty or ambiguity, and incorporate, where appropriate, the Department's interpretations of Part 40 into the regulatory text. We also anticipate reordering provisions of the rule so that the material flows more smoothly and is easier for readers to follow.

While we are soliciting comments on both the drug and alcohol portions of the regulation, we anticipate that the main focus of this effort will be on drug testing procedures, which are both more complex and older than the alcohol testing procedures. We seek the ideas of everyone involved with the program—employers, employees, consortia and third-party administrators, laboratories, substance abuse professionals, medical review officers, collectors, breath alcohol technicians, and other interested persons—to assist us in this process.

The Department is contemplating hosting one or more public meetings or other forums during which interested persons can discuss potential Part 40 changes with DOT officials and staff. We will issue a notice announcing such events when plans are in place.

Regulatory Analyses and Notices

This ANPRM, which simply requests public input concerning potential changes to the Department's drug and alcohol testing procedures, is not significant for purposes of Executive Order 12866 or Department of Transportation Rulemaking Policies and Procedures.

Issued this 22nd day of April 1996, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

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Federal Highway Administration**49 CFR Parts 383 and 391****[FHWA Docket No. MC-93-23]****RIN 2125-AD20****Commercial Driver Physical Qualifications As Part of the Commercial Driver's License Process****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of intent to form a Negotiated Rulemaking Committee on Commercial Driver's License (CDL) and Physical Qualifications Requirements.

SUMMARY: The FHWA proposes to establish a negotiated rulemaking advisory committee (the Committee) under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to consider the relevant issues and attempt to reach a consensus in developing regulations governing the proposed merger of the State-administered commercial driver's license procedures and the driver